

LIBRARY
SUPREME COURT, U. S.
IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 224.

**PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA,
CAPITAL TRANSIT COMPANY, and WASHINGTON TRANSIT
RADIO, Inc.,**

Petitioners,

v.

**FRANKLIN S. POLLAK and GUY MARTIN,
Respondents.**

No. 295.

**FRANKLIN S. POLLAK and GUY MARTIN,
Petitioners,**

v.

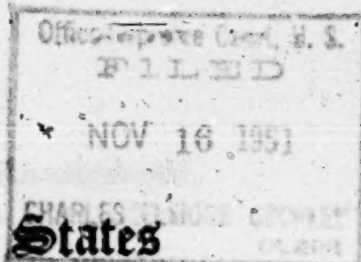
**PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA,
CAPITAL TRANSIT COMPANY, and WASHINGTON TRANSIT
RADIO, Inc.,**

Respondents.

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.**

**MOTION FOR LEAVE TO FILE A BRIEF AS
AMICI CURIAE.**

Radio Cincinnati, Inc., KXOK, Inc. (St. Louis), and
KCMO (Kansas City) respectfully move, pursuant to Rule
27, paragraph 9, of the Rules of this Court, for leave as
amici curiae to file a brief in this case urging reversal of



the decision of the Court below. Consent of the petitioners in No. 224 (respondents in No. 295) has been received. Consent of the respondents in No. 224 (petitioners in No. 295) has been requested but has been refused.

The moving parties are corporations operating FM radio broadcasting stations in Cincinnati, St. Louis and Kansas City. They broadcast radio programs that are received in street cars and buses in those cities, in the same manner that radio programs are received in street cars and buses in the District of Columbia.

The Public Utilities Commission of the District of Columbia, after investigation and formal public hearing, found that reception of radio programs in street cars and buses "tends to improve the conditions under which the public ride" and accordingly "is not inconsistent with public convenience, comfort and safety." The Court of Appeals acknowledged that the Commission, by Act of Congress, had jurisdiction and authority to fix and enforce standards of service. However, the court below found it unnecessary to decide whether the evidence supported the Commission's finding that radio broadcasts in street cars and buses are consistent with reasonable service since in its opinion these broadcasts "deprive objecting passengers of liberty without due process of law."

1. The interest of the moving parties in this case lies in the fact that the radio programs provided by them for reception in street cars and buses in Cincinnati, St. Louis and Kansas City are the same in general content and also in operation and effect as the radio programs received in street cars and buses in the District of Columbia. By reason of that fact the moving parties have a strong concern in the outcome of this case, the decision of which by this Court will have direct implications on their right to

continue to provide radio programs for street cars and buses in the cities served by them.

2. Public service commissions in Ohio, Missouri and many other states have broad authority to deal with all problems relating to service in buses and street cars, including, we believe, the problem of radio broadcasts. Over a period of many years these commissions have successfully handled similar problems—such as smoking in street cars and buses and heating and ventilation of street cars and buses—all relating to conflicting interests of passengers, without elevating them to the level of constitutional issues. Affirmance by this Court of the flat holding below that reception of radio broadcasts in street cars and buses is unconstitutional would deprive regulatory bodies in many states of the power they now have over this incident of service,—a power that has properly been committed by state legislatures to regulatory bodies.

3. In the present case the constitutional issue involves the Fifth Amendment—whether objecting passengers are deprived of liberty by action of the Federal government. In the situation of the moving parties the constitutional question would involve the Fourteenth Amendment—whether an objecting passenger would be deprived of liberty by action of state governments. The applicable portions of the two Amendments on deprivation of liberty are similar, and the questions are closely related. The moving parties, it is submitted, should be afforded an opportunity to develop to the Court the important bearing which a decision on the constitutional issues involved in this case will have on their rights and on the rights of millions of bus riders throughout the country. The question has not been emphasized by the petitioners since they are concerned

only with rights and interests of District of Columbia bus riders under the Fifth Amendment.

WHEREFORE, it is respectfully submitted that this motion for leave to file a brief as *amici curiae* should be granted.

Respectfully submitted,

ROBERT P. PATTERSON,
One Wall Street,
New York,

Attorney for Radio Cincinnati, Inc., KXOK,
Inc. and KCMO Broadcasting Company.